

**Letter of Findings Number: 04-20120522**  
**Sales/Use Tax**  
**For Tax Year 2009**

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**ISSUE**

**I. Sales/Use Tax–Skidsteer.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-3-1(a); IC § 6-2.5-3-4; [45 IAC 2.2-5-4](#); Sales Tax Information Bulletin 9 (August 2008); Sales Tax Information Bulletin 9 (July 2012).

Taxpayer protests the imposition of tax on a skidsteer.

**STATEMENT OF FACTS**

Taxpayer runs a fruit stand and farm. Taxpayer purchased a skidsteer from an equipment store in Indiana. Taxpayer filled out a Sales Tax Exemption Certificate (Form ST-105); Taxpayer did not pay sales tax on the skidsteer. The Indiana Department of Revenue ("Department") later issued a proposed assessment regarding the skidsteer. Taxpayer filed a protest with the Department. An administrative telephone hearing was conducted and this Letter of Findings results. Further facts will be supplied as required below.

**I. Sales/Use Tax–Skidsteer.**

**DISCUSSION**

The Department initially notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax in Indiana is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Also, a complementary excise tax "known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Indiana defines "use" as meaning, "the exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). An exemption from use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Also, IC § 6-2.5-3-4(b) states: "If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax." As noted, the Department issued a proposed assessment, since Taxpayer did not pay sales tax at the time of the purchase.

Regarding agricultural equipment, IC § 6-2.5-5-2 states that:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
  - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
  - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
  - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

At the hearing, Taxpayer's representative argued that Taxpayer runs a fruit stand and farm. Taxpayer transports fruit (melons, tomatoes, beans, sweet corn) from the field and farm to the stand using the skidsteer. Further, Taxpayer's representative stated that Taxpayer takes seed, soybeans, and field corn to the field, using the skidsteer to put the items on a wagon and remove items from the wagon to planter.

A skidsteer is a type of loader (in Taxpayer's memorandum to the Department Taxpayer calls it is a "skid loader (loader)"). [45 IAC 2.2-5-4](#), states in relevant part:

- (c) The following is a partial list of items which are considered subject to the sales tax.

**TAXABLE TRANSACTIONS**

Fences, posts, gates, and fencing materials.  
Water supply systems for personal use.  
Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.  
Ditchers and graders.  
Paints and brushes.  
Refrigerators, freezers, and other household appliances.  
Garden and lawn equipment, parts, and supplies.  
Electricity for lighting and other non-agricultural use.  
Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.  
Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.  
Pumps.  
All saws.  
All tools, including forks, shovels, hoes, welders, power tools, and hand tools.  
Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.  
Plumbing, electrical supplies, and accessories, pumps.  
Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.  
Food for non-exempt horses, ponies, etc.  
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.  
Field tile or culverts.  
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).  
Any replacement parts or accessories for the above items. (Emphasis added).

Thus under [45 IAC 2.2-5-4\(c\)](#) the skidsteer would only be exempt if a farmer was using it to haul animal waste. Taxpayer was not using the skidsteer for that purpose. Taxpayer cites to the Department's most recent version of Sales Tax Information Bulletin 9 (July 2012), 20120725 Ind. Reg. 045120427NRA, however that Information Bulletin was not in effect at the time of the purchase in 2009. The applicable Sales Tax Information Bulletin 9 (August 2008), 20080827 Ind. Reg. 045080655NRA, did not contain the language that Taxpayer relies upon. The Department further notes that the current language that Taxpayer relies upon in its argument is the following:

8. When used by entities occupationally engaged in agricultural production, blending and loading equipment used for plant food and crop protection products is exempt because this item consists of various dedicated equipment that facilitates the moving of exempt items from temporary storage locations to the location where they will be used. This would include loaders, scales, conveyors, pumps, temporary tankage, and associated plumbing.

What is at issue is not "plant food and crop protection products," and additionally Taxpayer's skidsteer is not a piece of "dedicated equipment" to that end. Taxpayer's use of the skidsteer includes post-production movement of the fruit to the fruit stand. Thus even if Sales Tax Information Bulletin 9 (July 2012) would have been in effect at the time of the purchase, Taxpayer's use of the equipment is not within the scope of exempt use.

#### **FINDING**

Taxpayer's protest is denied.

*Posted: 02/27/2013 by Legislative Services Agency*  
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